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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Revision of Rules and Policies for the ) IB Docket No. 95-168  
Direct Broadcast Satellite Service ) PP Docket No. 93-253

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AMERITECH'S COMMENTS

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Ameritech Corporation respectfully offers the following comments to the Notice of Proposed Rulemaking released in this docket on October 30, 1995 ("NPRM").

I.

INTRODUCTION

In the NPRM, the Commission begins the process of devising and implementing a method for reassigning 51 channels at two orbital locations for use in Direct Broadcast Satellite ("DBS") service. In 1989, when these channels initially were assigned, the Commission intended to give existing DBS permittees the first right to DBS channels which had been reclaimed for one reason or another. Now, based on developments which have occurred over nearly seven years, the Commission has tentatively concluded that it

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would be in the public interest to put these reclaimed DBS channels out for competitive bid in those cases where there is a mutually exclusive request for the channels.

With these DBS channels available to a broader number of potential applicants, the Commission has proposed several additional rules (1) to ensure that the reclaimed channels will be utilized in a timely manner, (2) to ensure timely DBS service to Alaska and Hawaii, and (3) to guard against potential anticompetitive conduct by the DBS provider. Ameritech directs its comments to this third objective.

It is reasonable for the Commission to enact rules to prevent an undue concentration of DBS channels. However, when designing such rules, the Commission also should try to encourage investment in DBS technology. Ameritech offers the following comments to help the Commission strike a more reasonable balance between those two goals.

## II.

### THERE IS NO LEGITIMATE REASON TO DIFFERENTIATE BETWEEN CABLE OPERATORS AND OTHER MVPDS WHEN IT COMES TO DBS CHANNEL AGGREGATION RULES.

The Commission proposes that any DBS licensee or operator affiliated with another multichannel video programming distributor ("MVPD") be permitted to control or use DBS channel assignments at only one of the

orbital locations capable of full-CONUS transmission. According to the Commission, this would limit potential concentration of DBS channels but still allows a DBS licensee or operator affiliated with a cable operator or other MVPD to fully develop a competitive service. However, the Commission asks whether this limitation should differentiate between cable operators and other MVPDs, whether a more stringent limitation should be placed on cable operators seeking to acquire DBS licenses or to operate a DBS service and whether any such limitations should be related to the size of the MVPD involved.<sup>1</sup>

The NPRM does not identify any basis for differentiating between cable operators and other MVPDs for purposes of rules the Commission may adopt to prevent unreasonable DBS channel concentration. Ameritech does not believe any legitimate reason exists. There are a variety of MVPDs, including broadcasters and wireless cable operators, competing in the marketplace and all should be governed by the same rules which may be adopted to prevent unreasonable DBS channel concentration. Applying special rules of this kind only with respect to cable operators would not address any potential channel concentration problem which has been identified. Rather, it simply would skew the marketplace with an artificial constraint that handicaps only one type of participant. Therefore, the Commission should not differentiate

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<sup>1</sup> NPRM at par. 40.

between cable operators and other MVPDs when it comes to any DBS channel aggregation rules which the Commission may adopt.

### III.

#### THE COMMISSION SHOULD RAISE THE LEVEL OF ATTRIBUTABLE INTEREST SUBSTANTIALLY ABOVE THE PROPOSED FIVE PERCENT.

Based on its concern about the potential for anticompetitive conduct, the Commission proposes to limit the total number of channels held by multiple DBS operators who have a common investor with either “controlling interests” or “any interest of five percent or more.”<sup>2</sup> This minimum five percent threshold may be too low to attract the necessary investment in DBS technology. This proposal would be particularly concerning if the five percent figure is not the limit on an investment in an individual DBS operator but represents the limit for total investment in DBS generally such that, for example, a three percent investment in two different DBS operators would trigger the Commission’s rule.

The Commission, undoubtedly, wants to encourage economic investment in DBS technology. After all, there currently are no satellites being built for western orbital positions and only one DBS orbital position is in use over a decade after initial authorization of the service. Therefore, the

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<sup>2</sup> NPRM at pars. 46-48.

Commission should not create unreasonable barriers to that investment unless there is an important public policy reason for doing so.

In this case, the Commission apparently is concerned about single interests controlling large numbers of DBS channels. However, an investment of substantially more than five percent would be necessary to exercise any meaningful control over a DBS operator or the channels in its DBS system. The Commission seems to recognize this fact given that it proposes a ten percent limit for institutional investors and investment companies.<sup>3</sup> The Commission should recognize that a five percent interest in a DBS operator will not give the investor control over that operator or its DBS channels and should substantially raise the limit on such investments so as to increase the amount of capital available for developing this important technology.

#### IV.

#### THE PROPOSED MARKETING LIMITATIONS SHOULD FACILITATE ACCESS TO PROGRAMMING.

The Commission asks in the NPRM whether it should impose service rules on DBS licensees designed to ensure that competing providers are not denied access to programming.<sup>4</sup> The Commission should do all it reasonably

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<sup>3</sup> NPRM at par. 48.

<sup>4</sup> NPRM at par. 57.

can to remove unfair obstacles that prevent potential competitors from gaining access to the programming they need to provide a viable multichannel alternative to customers. It is equally important that the Commission apply program access requirements equally to all programming entities affiliated with MVPDs or other programming distributors, including broadcasters, whether the method of signal distribution is wire or spectrum.

V.

CONCLUSION

In these comments, Ameritech has offered the Commission some ideas on how it can prevent unreasonable DBS channel concentration and still allow DBS operators to attract the capital necessary to develop this important technology more quickly than has occurred in recent years. Ameritech asks the Commission to take these comments into account in any rules promulgated in this docket.

Respectfully submitted,



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